

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC

In the matter of:)	
)	
Amendment of Part 73 of the Commission's)	
Rules to Introduce New Local)	RM-11846
Noncommercial Educational Broadcast)	
Stations Outside of Major Markets and)	
Urbanized Areas)	

COMMENTS OF REC NETWORKS

I. INTRODUCTION

1. REC Networks ("REC") is a leading advocate for a citizen's access to spectrum with a heavy focus on the Low Power FM (LPFM) broadcast stations as well as full-service noncommercial educational (NCE) broadcast stations and non-broadcast services such the Amateur Radio Service. REC's Michelle Bradley is a Society of Broadcast Engineers (SBE) Certified Broadcast Technologist. REC is also the author of the above captioned *Petition for Rulemaking or in the alternate, Petition for Declaratory Ruling* (Petition).

II. REC REINFORCES OUR SUPPORT FOR RM-11846 TO GROW RURAL COMMUNITY RADIO IN SPECTRALLY DISADVANTAGED COMMUNITIES

2. REC continues to support the petition. In this *Petition*, we review the current state of the reserved band (Channels 201~220) and the ability for smaller communities that are outside of the urban areas to be able to participate when channels are not available because channels are blocked because of one or more full-service noncommercial educational (NCE) stations that primarily serve the urbanized area, in many cases, ignoring the smaller nonurbanized areas.¹ Many of these communities are also excluded from LPFM because of the protection requirements that LPFM stations must give to full-service stations on co-channel, first and second adjacent channels.² Such protections are required as a result of the Local Community Radio Act.³ In addition, more communities would likely take a new community radio service more seriously if it had the security of primary service. These communities do not need a

¹ - *Petition* at ¶ 8.

² - *Id.* at ¶ 2.

³ - Pub. L. No. 111-371, 124 Stat. 4072 (2011).

full Class A allotment and in many cases, there are no vacant Class A allotments due to the distance separation requirements in the non-reserved band (Channels 221~300).⁴ Also, because under the current rules, educational services are counted as long as a station places a 60 dBu signal over a particular location without regard to where else the station serves.⁵ These communities may already “receive” 2 educational services, but in those cases, the stations are for other areas as the Commission has historically put a priority on higher powered NCE stations over lower powered ones.⁶

3. This petition also takes at task the technical necessity for protection of second and third adjacent channels in an age of advancing receiver technology.⁷ As mentioned in the *Petition*, the Commission already recognizes evolving receiver technology where it comes to waivers that are already given in certain cases such as *Raleigh*, which closely mirrors the arrangement that the *Petition* is seeking from a technical perspective. The Commission has already allowed de minimis overlap in cases like *Raleigh*, the original LPFM second adjacent waiver policy and for full-service stations, allows a tolerance of up to 3,000 persons overlapping a TV Channel 6 station.⁸

4. With an NCE filing window eminent, we need to seriously examine how much spectrum will actually be available and of the areas where spectrum is not available, how much of it is completely blocked out due to non-local full-service stations catering to a more distant and lucrative urbanized area. We also need to look at how the current policy impacts diversity. Diversity is more than just race, religion, national orientation, sexual orientation, gender and gender identity. It also includes socioeconomic diversity and the availability of services and infrastructure compared to other communities. With that, we are seeking a new line in the sand.

⁴ - See 47 C.F.R. §73.207

⁵ - See 47 C.F.R. §73.202(a)(1).

⁶ - See *Id.*

⁷ - See *Petition* at ¶ 9 citing *Educational Information Corporation*, Memorandum Opinion and Order, 6 FCC Rcd 2207, 2208 (1991) (“*Raleigh*”) at ¶ 9.

⁸ - See *Raleigh*. Further, in *Raleigh*, the application for Campbell University, WCCE(FM), File No. BPED-880810MA involved a request similar to what RM-11846 is proposing. In that case, the Commission determined that due to, in part, the “limited nature of the interference potential of second or third adjacent channels”, the Commission would “view waiver requests such as WCCE’s favorably where there is clearly a public benefit.” See *Raleigh* at ¶ 14. See also, 47 C.F.R. §73.525(c) in respect to the recognition of 3,000 persons receiving “interference”.

III. THE CRITERIA FOR WAIVER IN RM-11846 IS IN THE PUBLIC INTEREST

5. The current line is based on a history of licensing NCE stations in a manner that favored urbanized areas while shutting out surrounding rural areas and resistance to allow new entrants because of a 50-plus year old theory on receiver interference that pre-dates the invention of the phased lock look that permits modern digital tuning on consumer devices. With that, the *Petition* asks the question, where does the public interest of introducing new entrants to broadcasting from disadvantaged rural communities to construct stations that would have no influence on larger urbanized areas outweigh the 50-year old theory that second- and third-adjacent contour overlap, especially in the case of lower-powered new stations?⁹ REC agrees, there needs to be a thick line, or as some may say, a high hurdle.¹⁰ This *Petition* proposes to define that high hurdle.

6. *Qualify the community and applicant.* First and foremost, we propose to limit the policy to first aural services and to specifically exclude the counties that comprise the Nielsen Audio top-50 media markets.¹¹ While there are some areas within those markets that may be truly underserved, REC also recognizes that those areas may have more access to regional services that may be more likely to serve these communities than stations in lower-ranked and non-ranked markets. Secondly, the purpose of the station is to remain rural and to have no urban influence. Therefore, the *Petition* proposes that the 60 dBu coverage contour of one of these stations may not overlap a Census Bureau designated Urbanized Area.¹² Thirdly, the applicant must be a new-entrant (or an existing LPFM station) and with the grant of this facility, has no other broadcast holdings, nationwide.¹³ Likewise, the organization must be completely local with the organization's headquarters and a most of their board membership residing within 20 miles of the station thus restricting national and regional ownership. Finally, the area must not already have a channel available, even if it is for a facility less than what is desired (i.e. a Class A minimum non-directional facility).¹⁴

⁹ - See *Petition* at ¶ 32.

¹⁰ - See *WAIT Radio v. FCC*, 418 F. 2d at 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203(1972), *cert. denied*, 93 S. Ct. 461 (1972). See also *Thomas Radio v. FCC*, 716 F. 2d 921, 924 (D.C. Cir. 1983).

¹¹ - See *Petition* at ¶¶ 17-18.

¹² - See *Id.* at ¶ 19.

¹³ - See *Id.* at ¶ 20.

¹⁴ - See *Id.* at ¶ 21.

7. Qualify the facility. Once we have determined that the location and the applicant organization does qualify under the hardship, we must assure that the facility be locally focused but still viable. We do this by requiring a minimum Class-A facility (6 km service contour) and up to a maximum of 0.25 kW with a service contour of 13 km (100 meters HAAT).¹⁵ The proposed station can't be inside of the interfering and/or protected contours of any co-channel or first-adjacent channel stations.¹⁶ The proposed station could be inside the protected contour of a second or third adjacent station (as long as it meets the previous requirement) and that the population within the 100 dBu interfering contour does not exceed 0.2% of the population of the 60 dBu service contour of the second/third adjacent channel stations being overlapped or 3,000 persons, whichever is less and that the proposed station meets existing protection requirements to commercial full-service stations and foreign facilities.¹⁷

8. Address the impacted facility. In accordance with Section 316 of the Communications Act, the petition calls for due process to the affected broadcast station in the event that they wish to oppose the grant.¹⁸ Consistent with Raleigh, any overlapped station would have their license modified with a *per se* condition that would permit them to make modifications (except those that would create new co-channel or first-adjacent channel overlap) without regard to the overlapping facility.¹⁹

VI. CONCLUSION

9. The broadcast industry, both commercial and noncommercial is evolving and more people are turning to their cell phones for information. In some areas, especially some of the rural communities identified in RM-11846, wireless service is unreliable and for some socioeconomic classes, not affordable. Adding opportunities for these local voices to come on the air will add a new level of diversity and when needed, more localized emergency information to the dial. The issue at hand is where do we focus our priorities? We must look at the will of Congress in §307(b), the evolution of FM receiver technology, the changes in the broadcast industry and the thousands of rural communities that are left out in the cold. Does our current policy promote “fair” and “equitable” distribution of radio service when thousands of smaller communities are excluded from being among those “several” communities by

¹⁵ - See *Id.* at ¶ 22.

¹⁶ - See *Id.* at ¶ 23.

¹⁷ - REC also proposes the option to use undesired to desired (U/D) ratio to determine the size of the “interference” zone where population is counted. See also *Id.* at ¶ 24.

¹⁸ - See 47 U. S. C. §316.

¹⁹ - See *Petition* at ¶ 27.

virtue of the “big city” needing spectrum? Is the continued over-protection of 7 channels because of perceptions about interference considered “efficient” under §307(b) especially when dealing with lower powered stations already proven in the secondary space and in the face of evolved technology? RM-11846 encourages the Commission to revisit this issue in advance of the next opportunity for new NCE construction permit applications.

11. Regardless of whether the Commission acts on RM-11846, there will likely be applications filed in the next NCE window from communities wanting their first service and will request a waiver because a bigger city shuts them out on second or third adjacent. There should be a policy in place to assure that these applications, even in the waiver process are treated fairly and consistently. Even if this does not go to a codified rule, REC would be satisfied with a policy statement in advance of the next NCE filing window. It is not REC’s intention to delay the filing window, but we feel that it is in the public interest for the Commission to entertain these waiver requests.

12. REC’s goal is to build a new generation of community radio, done in a manner that is most spectrum efficient. The time is now ripe to bring in the policies proposed in RM-11846.

Respectfully submitted,

/S/

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APPENDIX A

**CRITERIA CHECKLIST FOR SECOND AND THIRD ADJACENT CHANNEL
OVERLAP WAIVER PROPOSED IN RM-11846**

Does the proposed community of license meet the minimum criteria to be a community for license/allotment purposes?	YES
Does this community currently have any aural services (AM or FM, commercial or noncommercial, excluding LPFM, FM translators or boosters) licensed to it?	NO
Is the station located <u>outside</u> of a Nielsen Audio market ranked 1 through 50?	YES
Does the 1 mV/m (60 dBu) coverage contour of the proposed station overlap into any US Census Bureau designated Urbanized Area?	NO
Does the applicant organization have any other attributable broadcast holdings (except an LPFM station that would be divested upon program test)?	NO
Is the applicant organization headquartered within 20 miles of the proposed station?	YES
Does a minimum of 75% of the board members of the applicant organization reside within 20 miles of the proposed station?	YES
At the proposed site, can a non-directional facility with 100 watts ERP at 30 meters HAAT be placed on any of the 20 reserved band (88.1~91.9) channels without the need of the waiver?	NO
Of the full-service reserved band stations that are blocking the ability for the facility to be authorized without a waiver, do any of those stations place a 1 mV/m coverage contour over any Urbanized Area?	YES
Does the proposed facility have a minimum coverage contour of 6 km (100 w @ 30m HAAT), a maximum coverage contour of 13 km (250w @ 100m HAAT) and has an ERP that does not exceed 250 watts?	YES
Does the proposed facility place a protected contour over any interfering contour?	NO
Does the proposed facility place an interfering contour over any protected contour on co- or first-adjacent channels?	NO
Does the proposed facility meet all protections required in §73.507 towards commercial FM stations (including IF) and foreign FM stations as well as §73.525 towards any full-service TV Channel 6 stations (prior to the LPTV analog sunset)?	YES
Of the second and third adjacent facilities that place a protected contour over the proposed facility's interfering contour, does the population within the 100 dBu interfering contour exceed 0.2 % of the population of the coverage contour of the overlapped station but no greater than 3,000 persons?	NO
If the previous answer is "YES", if by using the <i>Living Way</i> U/D Ratio method based on the field strength of the incumbent facility at the proposed antenna site, does the population within the 100 dBu interfering contour exceed 0.2 % of the population of the coverage contour of the overlapped station but no greater than 3,000 persons?	NO